IN THE HIGH COURT OF UTTARNCHAL AT NAINITAL

Civil Revision No. 37 of 2004

Sri Surender Singh & others ..……. Revisionists / Defendants
Versus
Smt. Pushpa Wati & others ..……. Respondents /Plaintiffs

Mr. Pankaj Miglani, learned counsel for the revisionists.
Mr. B.P. Nautiyal, learned counsel for the respondents.

Hon'ble P.C. Verma, A.C.J.

This revision arises out of the proceedings of Suit No. 89 of 1980. This revision is filed challenging the order dated 25.3.2004 passed by the Learned Civil Judge (Sr. Division)/Third FTC, Dehradun, whereby the application under Order 9 Rule 7 CPC moved by the defendants / revisionists was rejected.

From the number of the suit, it is clear that the suit is pending from 1980 and the trial has not been concluded. The defendants participated in the proceedings up to the stage of cross-examination of witnesses of the plaintiffs and the defendants. Thereafter, the case was listed for final hearing and arguments were heard in part and order dated 16.12.1999 was passed on account of absence of defendants counsel to proceed ex-parte.

Thereafter, the case was listed for arguments and the plaintiffs could not concluded their arguments. It appears that on the dates, when the arguments were heard, the revisionist, himself, was also present, but he was under the impression that ex-parte order has been set aside on the application of his pairokar namely Jai Prakash. When, after the inspection of records, he came to know that the ex-parte order dated 16.12.1999 has not been set aside, then the application for setting aside the order dated 16.12.1999, by which the Court directed to proceed ex-parte, was moved under Order 9 Rule 7 C.P.C.

By the impugned order 25.3.2004, the application under Order 9 Rule 7 C.P.C. has been rejected on the ground that it was highly belated and it was in knowledge of the defendants when the ex-parte order was passed as it is evident from the order sheet that he was participating in the proceedings.

Learned counsel for the revisionists / defendants has submitted that the revisionists / defendants had a right to argue the case even if ex-parte order is passed before the arguments are started. Here, in the present case, since the arguments were started, therefore, order dated 16.12.1999 is contrary to law in view of the law laid down by the Hon'ble Apex Court in the case of Arjun Singh Vs Mohinder Kumar reported in AIR 1964 Supreme Court 993.

Therefore, the order dated 16.12.1999 suffers from miscarriage of justice and is, hereby, set aside. Trial Court is directed to allow the revisionists to put forward their defence including arguments. Trial Court is further directed to conclude the trial within a period of one month from the date of production of certified copy of this order. Defendants / revisionists shall not seek any adjournment, if there is any personal ground of adjournment of their Advocate, they may arrange for another Advocate.

With the aforesaid directions, the revision is disposed of.

(P.C. Verma, A.C.J.)

Dt. 28.06.2004

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